U.S. Department of Homeland Security
20 Mass, Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: BALTIMORE DISTRICT OFFICE Date: SEP 2 [illegible]

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Baltimore. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant is a native and citizen of Sierra Leone. The applicant was found inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for use of a fraudulent document to obtain entry to the United States. The record reflects that the applicant is the spouse of a U.S. citizen, Latisha Cowan.

The district director found that the applicant had failed to establish extreme hardship to his U.S. citizen spouse. The application was denied accordingly.

On appeal, counsel contests the finding of inadmissibility and contends that the applicant has established extreme hardship to his spouse, in particular due to her special needs for financial and emotional support as a parent raising one child with sickle cell anemia and another child with attention deficit disorder. In support of the appeal, counsel submits a letter from the applicant's wife and the applicant's birth certificate. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides:

> In general.—Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

8 U.S.C. § 1182(a)(6)(C)(i).

The record reflects that the applicant claims that he was admitted to the United States as a visitor in 1997.[1] *See, e.g.* Form I-821, *Application for Temporary Protected Status* (January 21, 1998). Records of the former Immigration and Naturalization Service (INS) documenting his entry could not be located. Applicant claims that his passport and Form I-94, *Arrival/Departure Record,* are lost. Noted on his first application for temporary protected status, apparently by an officer of the INS, is "entered on fraudulent passport – name sub & photo sub." The source of this information is not clear. A letter issued by the Baltimore District Office to the applicant on February 25, 2002, indicates, "[o]n February 7, 2002 you appeared before an officer of this Service regarding your application. The record reflects that you were born on March 26, 1972 in Sierra Leone. At the time of your interview, you advised the interviewing officer that you last entered the United States on August 18, 1997 using a fraudulent Guineen [sic] passport under the name of [redacted]" *Letter of Louis D. Crocetti, District Director,* at 2. Subsequently, the applicant submitted a signed application for waiver of inadmissibility, indicating under item number 10, "Applicant was declared inadmissible for the following reasons . . . INA § 212(a)(6)(C)(i) entered the U.S. with fraudulent document." Form I-601, *Application for Waiver of Grounds of Excludability* (received March 19, 2002). The attached letter from his attorney states, "[g]ranted 30 days from FEB 25 2002 [sic] to file an I-601 waiver *because he entered the*

[1] The record is inconsistent as to the exact date of entry and the port of entry. However, because the applicant has apparently admitted to fraud, there is no need to establish the date and port of entry with specificity.

United States with false documents . . .." *Letter of John O'Leary* (March 22, 2002) (emphasis added). On appeal, counsel asserts:

> The applicant did not use another's passport to enter. He obtained it Guinea [sic] due to the fighting in Sierra Leone. He was living in Guinea because of the war in Sierra Leone. His father and mother were Guinean. At, [sic] first the Guinean authorities rejected his ID application because the [sic] saw the spelling of his name was the British way. He then returned the next day, giving them his father's name [redacted] Guinean version of his name). He went to court to have a passport issued under the name [redacted]. This was not a case of borrowing of a passport. He obtained a Guinean passport because Sierra Leoneon [sic] passports were not available and only available by returning to Sierra Leone, war torn at the time. This was a valid visa, not a fraudulent visa. He was employed at the US [sic] Embassy in Conakry with that name. (3 yrs).

Form I-290B, *Notice of Appeal to the Administrative Appeals Unit (AAU)* (August 20, 2003). The AAO notes, as did the district director below, that assertions of counsel do not constitute evidence. *Matter of Obaigbena,* 19 I&N Dec. 503, 506 (BIA 1980). Counsel's assertions appear relevant to the issue of whether the applicant committed fraud in his entry into the United States. However, there is no evidence in the record to support counsel's statements. To the contrary, it appears that the applicant has admitted and acknowledged committing fraud in order to obtain admission to the United States. On this record, the AAO cannot find that the district director erred in finding the applicant inadmissible. Therefore, the determination of the district director is sustained on this matter, and the question becomes whether the applicant qualifies for a waiver.

Section 212(i) of the Act provides, in pertinent part:

> (i) (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien . . ."

8 U.S.C. § 212(i). Hardship to the alien himself is not a permissible consideration under the statute. A section 212(i) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA1999). In *Matter of Cervantes-Gonzalez,* the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the

qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

> Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

The applicant's wife [redacted] was born and raised in the United States. Her mother and father live in the United States, in Albany, New York. Form G-325, *Biographic Information* (February 26, 2001). The applicant and his wife have one son, and his wife has another son from a prior relationship. [redacted] sworn statement indicates that "[m]y oldest son has Attention Deficit Handicap Disorder (ADHD), and in the year 2000 alone this condition resulted in major behavior problems at school and home . . . [he] was suspended at least 20 times from school. My husband has eliminated most of my son's issues by giving him undivided attention and gaining his trust." *Letter of Latisha Jalloh* (August 8, 2003), at 1. USCIS is not insensitive to the serious issues raised by [redacted] with respect to her older son. However, the AAO notes that the record contains no evidence of his medical condition or school suspensions (or asserted improvement in his record of suspensions). This evidence should be readily available for production in support of this application and no explanation is provided for its absence. In these proceedings, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. The weight accorded to secondary evidence, such as a sworn statement, is diminished when primary evidence of the facts was available but not provided. *See* 8 C.F.R. § 103.2(b)(2).

The record does contain a letter documenting the younger son's medical condition, sickle cell anemia. *Letter of Barbara Speller-Brown, RN* (March 14, 2003). Implications of this diagnosis include multiple medical emergencies, the need for close, careful monitoring at all times, risk of life-threatening blood poisoning, and episodes of pain. [redacted] states that she lost her job in January 2003 due to the absences from work occasioned by her son's illness. *Letter of Latisha Jalloh, supra,* at 1.

Counsel submitted country conditions documentation regarding Sierra Leone, indicating, "[c]ivil war between the government and the Revolutionary United Front (RUF) has resulted in tens of thousands of deaths and the displacement of more than 2 million people . . . Sierra Leone is an extremely poor African nation with tremendous inequality in income distribution. . . . [T]he economic and social infrastructure is not well developed, and serious social disorders continue to hamper economic development. About two-thirds of the working-age population engages in subsistence agriculture. . . . " *CIA World Factbook 2001.* The official language of Sierra Leone is English, but the "principal vernaculars" are Mende, Temne, and Krio. *Id.* The applicant's spouse has no family or other ties to Sierra Leone. In view of the totality of the circumstances, the

AAO finds that relocation to Sierra Leone to avoid separation from her spouse would constitute extreme hardship. The question then becomes whether the refusal to admit the applicant will result in extreme hardship to Ms. ~~Jalloh~~ if she remains in the United States.

U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai,* 19 I&N Dec. 245, 246 (BIA 1984). Prior to her marriage to the applicant, [redacted] income was under $13,000. *Individual Tax Return for Latisha Cowan* (2000). The applicant's salary significantly supplements the household income. *See Individual Tax Return for Sillusaria Jalloh and Latisha Jalloh* (2002) and accompanying Forms W-2 (indicating that the applicant supplied over 80% of the household income, and [redacted] income alone amounted to under $9,000). Although [redacted] was apparently a single parent before marrying the applicant, the child of their marriage and his health condition has created, and will continue to create, a significantly greater financial, emotional, and medical burden and strain. The AAO finds that, under the circumstances, the hardship [redacted] would face if her husband were refused admission is beyond that which is commonly experienced in cases of separation due to deportation of a spouse.

Therefore, applying the *Cervantes-Gonzalez* factors to the totality of the circumstances, the applicant has established that the refusal of his admission would cause his U.S. citizen spouse extreme hardship.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States that are not outweighed by adverse factors. *See Matter of T-S-Y-,* 7 I&N Dec. 582 (BIA 1957). The adverse factor in the present case is the applicant's use of fraudulent documents in 1997. The favorable or mitigating factors in the present case are the extreme hardship to the applicant's wife if he were refused admission, the serious medical condition of his son, the close mentoring relationship he has established with his U.S. citizen step-son, and the country conditions in Sierra that existed at the time the applicant resorted to the use of fraudulent documents.

The AAO finds that, although the immigration violation committed by the applicant cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.